

NOTICE OF INTENT

Department of Health and Hospitals Board of Medical Examiners

General Information; Complaints and Investigations; Adjudication
(LAC 46:XLV.8315, 9707, 9709, and 9711)

Notice is hereby given that in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et. seq., and pursuant to the authority vested in the Louisiana State Board of Medical Examiners (board) by the Louisiana Medical Practice Act, R.S. 37:1261-1292, the board intends to adopt an organizational Rule and amend its rules on investigations and complaints of physicians. The proposed changes: add a new Rule (§8315) specifying that no individual may simultaneously hold the positions of executive director and director of investigations and provide for related matters; delete §9707.C, relative to the issuance of subpoenas, reinstate it in §9711.C (formal investigations) and list the items that may be subpoenaed during a preliminary review (§9709.B.1); specify that affidavits rather than subpoenas may be obtained to preserve the testimony of a complainant and complainant witnesses during a preliminary review (§9709.B.1); revise the wording on §9709.F.1 to provide flexibility to gather additional information to support a recommendation to dismiss a preliminary review within a specified period of time in lieu of automatically commencing a formal investigation (§9709.F.1); identify and limit the potential participants in conferences with board staff (§9711.G.1); and reduce the period for completing a formal investigation from 36 to 24 months (§9711.H). The proposed changes are set forth below.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLV. Medical Professions

Subpart 4. Administrative Provisions

Chapter 83. General Information

Subchapter B. Board Organization

§8315. Executive Director; Director of Investigations

A. No individual shall simultaneously hold the positions of executive director and director of investigations for the board nor shall the executive director serve as an investigator on any complaint received or initiated by the board with respect to a physician. Each of these positions may be filled by the board on an interim basis; however, if a position remains vacant for a period of six months, the board shall notify its legislative oversight committees of such fact and its plans and anticipated time frame within which to fill the position.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 1261-1292.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 42:

Subpart 5. Rules of Procedure

Chapter 97. Complaints and Investigations

§9707. Complaint Processing

A. - B. ...

C. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292 and 37:1270(A)(5).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 42:

§9709. Preliminary Review

A. ...

B. During a review such action may be initiated and taken as deemed necessary or appropriate and additional information may be obtained to assist in the determination. As part of the preliminary review:

1. documents and information which may be needed to determine if the complaint is jurisdictional and whether sufficient cause exist to warrant formal investigation may be gathered and secured. To assist in a review a designee authorized by the board is authorized to issue, as necessary or upon request of board staff, subpoenas to obtain medical, hospital and pharmacy records and records from law enforcement, state and federal agencies. Affidavits may be obtained to preserve the testimony of a complainant and complaint witnesses;

B.2. - E. ...

F. At the conclusion of a preliminary review a determination shall be made as to whether the complaint is jurisdictional and there is sufficient cause for investigation. If the complaint:

1. is not jurisdictional or there is insufficient cause for investigation, a report and recommendation shall be submitted to the board to close the complaint without investigation. If approved by the board, the complainant and the licensee, if the licensee was notified of the preliminary review, shall be notified of the disposition. If not approved by the board, the board shall direct the board's staff to undertake such additional review as may be necessary or indicated within a specified period of time. A complaint closed after preliminary review shall not be considered an investigation by the board and need not be reported as such by a licensee on subsequent renewal applications to the board;

2. - 2.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292 and 37:1270(A)(5).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 42:

§9711. Formal Investigation

A. - B. ...

C. Once a formal investigation is initiated by the board, an investigation shall be undertaken to determine whether or not there is sufficient information and evidence to indicate that a violation of the law has occurred. To assist in a formal investigation subpoenas may be issued in the same manner as set forth in §9709.B to obtain any of the items listed therein and any other documents and other information, the appearance of witnesses and sworn testimony.

D. - F. ...

G. If the investigation provides sufficient information and evidence to indicate that a violation of the law has occurred, an administrative complaint may be filed with the board, pursuant to Chapter 99 of these rules, provided one or more of the following conditions exist:

1. a draft administrative complaint, in the form and content specified in §9903.B of these rules, has been mailed or provided to the licensee accompanied by a letter providing a reasonable opportunity for a conference to show compliance with all lawful requirements for the retention of the license without restriction, or to show that the complaint is unfounded as contemplated by R.S. 49:961(C); however, the licensee fails to respond to the complaint and letter, waives the opportunity, or the response does not satisfactorily demonstrate lawful compliance or that the complaint is unfounded. Such conference shall be attended only by the board's director of investigations or the investigator assigned to the matter and legal counsel, if any, and by the physician and the physician's counsel, if any;

2. - 3. ...

H. Formal investigations shall be completed within 24 months after initiated by the board. However, this period may be increased by the board for satisfactory cause and no complaint shall be dismissed solely because a formal investigation was not completed within this period. This period shall also not apply to any investigation pending on July 1, 2015.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292 and 37:1270(A)(5).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 42:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on the family has been considered. It is not anticipated that the proposed amendments will have any impact on family, formation, stability or autonomy, as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on those that may be living at or below one hundred percent of the federal poverty line has been considered. It is not anticipated that the proposed amendments will have any impact on child, individual or family poverty in relation to individual or community asset development, as described in R.S. 49:973.

Provider Impact Statement

In compliance with HCR 170 of the 2014 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on organizations that provide services for individuals with development disabilities has been considered. It is not anticipated that the proposed amendments will have any impact on the staffing, costs or overall ability of such organizations to provide the same level of services, as described in HCR 170.

Public Comments

Interested persons may submit written data, views, arguments, information or comments on the proposed amendment to Rita Arceneaux, Confidential Executive Assistant, Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130, (504) 568-6820, ex. 242. She is responsible for responding to inquiries. Written comments will be accepted until 4 p.m., January 19, 2016.

Public Hearing

A request pursuant to R.S. 49:953(A)(2) for a public hearing must be made in writing and received by the board within 20 days of the date of this notice.

If a public hearing is requested to provide data, views, arguments, information or comments orally in accordance with the Louisiana Administrative Procedure Act, the hearing will be held on January 25, 2016, at 9 a.m. at the office of the Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130. Any person wishing to attend should call to confirm that a hearing is being held.

Cecilia Mouton, M.D.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: General Information; Complaints and Investigations; Adjudication

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Other than publication costs during FY 16, it is not anticipated that the proposed changes will have further impact on the Board or any other state or local governmental unit. Publication costs associated with notice (\$333) and promulgation (\$213) of the changes are estimated at a combined total of \$546 in FY 16. The Board of Medical Examiners proposes to adopt an organizational rule (8315) specifying separation of duties of the executive director and director of investigations. The Board also seeks to amend its rules on complaints and investigations of physicians to further clarify its intended procedures subsequent to rules submitted in September 2015 and

pursuant to requirements adopted by Act 441 of the 2015 Regular Legislative Session (LAC 46:XLV 9707, 9709, 9711).

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no anticipated effect on the revenue collections of the Board of Medical Examiners or any state or local governmental unit.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

It is not anticipated that the proposed changes will effect costs, paperwork or workload of physicians, nor on receipts and/or income of licensees or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is not anticipated that the proposed changes will have any impact on competition or employment in either the public or private sector.

Cecilia Mouton, M.D.
Executive Director
1512#042

Evan Brasseaux
Staff Director
Legislative Fiscal Office